

REGULAR

NUMBER: 262.4

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS TO REPEAL SECTION I-310-4.10 OF THE MILPITAS MUNICIPAL CODE IN ITS ENTIRETY, TO ADD A NEW SECTION I-310-4.10 OF THE MILPITAS MUNICIPAL CODE, AND TO AMEND ALL REFERENCES TO THE “OPEN GOVERNMENT COMMISSION” IN TITLE I, CHAPTER 310 TO REFER TO “OPEN GOVERNMENT SUBCOMMITTEE”

HISTORY: This ordinance was introduced at a meeting of the Milpitas City Council on December 19, 2006, by motion of Vice Mayor Livengood, and was adopted at a meeting of said Council on _____, 2007, upon motion of Councilmember _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

FINDING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS FINDS AS FOLLOWS:

(1).

On April 5, 2005, the Milpitas City Council adopted Ordinance No. 262.1, repealing chapter 310 and 320 of the Milpitas Municipal Code and adding Chapter 310 to Title I of the Milpitas Municipal Code establishing regulations governing access to public meetings and public records, designating city employee salary information by title as a public record, regulating lobbyists' activities and solicitation of donations by public officials and establishing an Open Government Commission.

(2).

On August 16, 2005 the Milpitas City Council adopted Ordinance No. 262.2, amending Title I, Chapter 310, Section 4.10(a) by adding a subsection (1) and establishing a City Council Open Government Subcommittee to assume all of the duties and powers of the Open Government Commission until December 31, 2006.

(3).

The City Council Open Government Subcommittee now recommends to the City Council that the Subcommittee continue permanently.

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1.

Title I, Chapter 310, Section 4 of the Milpitas Municipal Code, "Open Government Commission" is hereby amended by repealing Section 4.10 and replacing Title I, Chapter 310, Section 4.10 to read as follows:

I-310-4.10 THE CITY COUNCIL OPEN GOVERNMENT SUBCOMMITTEE

- (a) There is hereby established a subcommittee of the City Council of the City of Milpitas known as the "City Council Open Government Subcommittee." The City Council Open Government Subcommittee shall consist of two members of the City Council. The City Attorney shall serve as legal advisor to the Subcommittee. The Subcommittee shall, at its request, have assigned an attorney from within the City Attorney's Office, who is experienced in the laws relating to public access and open government. This attorney shall serve as the legal advisor to the Subcommittee and an ethical wall shall be maintained between the work of this attorney on behalf of the Subcommittee and any person or office that the Subcommittee determines may have a conflict of interest with regard to the matters being handled by the attorney.
- (b) The Subcommittee shall advise the City Council on appropriate ways in which to implement this Chapter. The Subcommittee shall develop appropriate goals to ensure practical and timely implementation of the Open Government Ordinance. The Subcommittee shall make recommendations to the City Council on amendments to this Chapter. The Subcommittee shall report to the City Council at least once annually on any practical or policy problems encountered in the administration of the Open Government Ordinance. The Subcommittee shall receive and review regular quarterly reports on requests for public information. Such reports shall not identify the requestor or any information confidential by law.
- (c) The City Council Open Government Subcommittee shall recommend to the City Council an administrative process for the review and enforcement of the Open Government Ordinance. No such administrative process shall preclude, delay or in any way limit a person's remedies under the Brown Act or the California Public Records Act.
- (d) In addition to the powers specified above, the City Council Open Government Subcommittee shall possess such powers as the City Council may confer upon it by ordinance or as the people of Milpitas shall confer upon it by initiative.

Section 2.

Any and all references to "Open Government Commission" in Title I, Chapter 310 of the Milpitas Municipal Code are amended to refer to "City Council Open Government Subcommittee."

Section 3. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption, and prior to the expiration of 15 days of its passage shall be published at least once in the Milpitas Post, a newspaper of general circulation published and circulated in the City of Milpitas, and thereafter the same shall be in full force and effect.

Section 4. SEVERABILITY

In the event that any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.